

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

IN RE: NEW YORK CITY ASBESTOS LITIGATION

APRIL 2012 IN-EXTREMIS LUNG CANCER GROUP, :

Plaintiffs, :

v. :

CRANE CO, ET AL., :

Defendants. :

Deposition of DAVID P. SARGENT, JR., PE

Washington, D.C.

Tuesday, September 18, 2012

10:00 a.m.

Deposition of DAVID P. SARGENT, JR., PE, held
at the offices of K&L Gates, LLP, 1601 K Street, NW,
Washington, D.C, pursuant to agreement, before
Cassandra E. Ellis, Registered Professional Reporter
and Notary Public of The District of Columbia.

Job No.: 418229

Pages 1 through 199

Reported by: Cassandra E. Ellis, RPR

1 DAVID P. SARGENT, JR., PE
2 early to mid `70s.

3 Q Let me revise my question,
4 with your suggestion.

5 You are unaware of any
6 Navy specification, from the 1920s
7 through the early to mid 1970s, that
8 required a specific warning regarding
9 asbestos?

10 A Now, when you say
11 specification, are we speaking of a
12 Navy spec, a military spec, a
13 technical specification as used in a
14 procurement contract?

15 Q Yes, sir.

16 A I am not aware of any such
17 specification in that time period.

18 Q Are you aware of any Navy
19 order or direction or memo or
20 suggestion, from the 1920s through the
21 early 19 -- strike that -- through the
22 early to mid 1970s, that required a
23 specific warning regarding asbestos?

24 MR. INSCO: Objection
25 to form, overbroad.

1 DAVID P. SARGENT, JR., PE

2 A Isn't that the same
3 question?

4 Q Well, the first one was
5 focused more on specifications,
6 specifically.

7 A I see.

8 Q Now I'm broadening it to
9 any order memo direction anything that
10 may be --

11 A No, sir, I'm not aware of
12 any document, be it technical spec or
13 policy memo or anything else, that
14 required a specific asbestos warning
15 or spiel in that timeframe.

16 Q Okay. During the same
17 timeframe, from the 1920s to the early
18 to mid 1970s, are you aware of any
19 Navy specifications, orders,
20 directions or new document that
21 specifically prohibited a warning
22 regarding asbestos?

23 A As you worded the
24 question, specifically prohibited, no,
25 sir, I'm not aware of a document that

1 DAVID P. SARGENT, JR., PE
2 had prohibited -- prohibitive language
3 in it.

4 Q Are you aware, from the
5 1920s through the early to mid 1970s,
6 of any Navy specification document,
7 order, direction, that spoke to the
8 content of any asbestos warning?

9 A Are we speaking about, and
10 maybe I should have asked this
11 earlier, documentation that had to do
12 with shipboard environment, which is
13 my expertise, as opposed to, for
14 instance, industrial activities, which
15 might be different? I might not know
16 as much about those, so my expertise
17 is really focused on ships, ships when
18 they are in shipyards is certainly
19 part of my expertise.

20 Q That's a fair limitation.

21 A And back to the first part
22 of the question?

23 Q Sure. Whether you are --
24 are you aware, from the timeframe 1920
25 to the early to mid 1970s, whether

1 DAVID P. SARGENT, JR., PE
2 you're aware of any US Navy specs,
3 orders, directions, documents that
4 spoke to the issue of the content of
5 any asbestos warnings?

6 MR. INSCO:
7 Objection, form,
8 overbroad.

9 A Certainly none that I can
10 think of, I don't believe that I've
11 seen anything like that, and certainly
12 not anything that had to do with
13 shipboard environment.

14 Q I want to understand when
15 you made the distinction between
16 shipboard and overhauls at a Navy yard
17 versus industrial would your answers
18 be any different if focus was on the
19 industrial end of things or you just
20 don't feel --

21 A Yes, sir.

22 Q -- you have enough
23 expertise in that area?

24 A No, sir, I'm aware that
25 certainly during World War II and

1 DAVID P. SARGENT, JR., PE
2 quite detailed in what it was that was
3 allowed and, therefore, detailed on
4 what wasn't allowed.

5 (Exhibit No. 6 was marked.)

6 BY MR. KRISTAL:

7 Q Let me just mark for you I
8 don't want you to do this with you
9 stretching your memory?

10 A Thank you.

11 Q Exhibit 6 is Mil Standard
12 129, the first iteration dated August
13 9th, 1951, if you just flip through it
14 briefly, is that what it purports to
15 be on its cover?

16 A Yes, sir, it's clearly
17 because it replaces or supersedes a
18 number of different Army, Air Force,
19 and the Navy shipment marking
20 handbook, it would appear to be
21 probably the first in this series of
22 mil standards as opposed to individual
23 service standards.

24 Q And on the first page we
25 can agree it states the purpose, and

1 DAVID P. SARGENT, JR., PE
2 the purpose of this standard is to
3 provide uniform marking for shipment
4 of material for the armed forces?

5 A Yes, sir.

6 Q And that includes the
7 Navy, obviously?

8 A It does, indeed.

9 Q Okay. And also the next
10 section talks about deviations, and it
11 says, quote, when deviations from this
12 standard are found to be necessary,
13 owing to peculiar circumstances,
14 specific instructions shall be
15 obtained from the procuring activity
16 having responsibility for the
17 shipment, end quote; do you see that?

18 A Yes, sir.

19 Q So whatever is contained
20 in here, in terms of what the markings
21 are required to be, if someone who was
22 shipping a container that contained an
23 item that they found that there might
24 be a need for deviation could seek
25 permission to put that on there; is

1 DAVID P. SARGENT, JR., PE

2 that fair to say?

3 A Yes, sir.

4 Q And if you turn to the
5 next page, under unauthorized
6 markings, quote, no markings shall be
7 placed on containers other than those
8 specified or permitted by the
9 procuring activity or those required
10 by regulation and/or statute, end
11 quote; do you see that?

12 A I do.

13 Q So that, let's see if we
14 can agree, is saying this is what we
15 want you to put on your containers.
16 But if you seek permission from the
17 Navy or if some other regulation or
18 statute requires you may be permitted
19 to add additional markings; is that
20 fair?

21 A Yeah. Yes, sir.

22 Q If you need to look at
23 this or any other iteration would you
24 agree that this Military Standard 129,
25 for the marking of shipments, did not

1 DAVID P. SARGENT, JR., PE
2 prohibit or preclude a manufacturer of
3 a piece of equipment from putting an
4 asbestos warning on the container?

5 A Well, I -- no, I don't
6 think I would agree with that, as you
7 stated, it certainly it says other
8 markings, when deviations from the
9 standard are found necessary owing to
10 peculiar circumstances specific
11 instructions shall be obtained from
12 the procuring activity, and then,
13 again, where you wrote unauthorized
14 nothing except what's in here shall be
15 here.

16 So if you're saying that
17 an asbestos health warning fit into a
18 category of a deviation then clearly
19 this Mil Standard would allow a
20 discussion about that from a
21 manufacturer to the procuring
22 activity. Assuming that this Mil
23 Standard was invoked in the contract
24 that was procuring that item.

25 Q Fair enough. And the

1 DAVID P. SARGENT, JR., PE
2 procuring activity is a term of art,
3 so to speak, that just means whomever
4 is -- whomever in the Navy is
5 purchasing the item, is that the
6 procuring --

7 A It means which Navy
8 activity issued the procurement
9 contract.

10 Q Okay.

11 A BUSHIPS, B-U-S-H-I-P-S,
12 all caps.

13 Q Got it. That's
14 abbreviation for Bureau of Ships.

15 Are you aware of any
16 instance where an equipment
17 manufacturer sought permission from
18 BUSHIPS, pursuant to this military
19 standard, to put an asbestos warning
20 on the container?

21 A No, sir.

22 MR. INSCO: Object to
23 form, assumes facts.

24 BY MR. KRISTAL:

25 Q Are you aware of the

1 DAVID P. SARGENT, JR., PE
2 manufacturer of any
3 asbestos-containing product seeking
4 permission from the Navy, pursuant to
5 Mil Standard 129, to put an asbestos
6 warning on a container?

7 MR. INSCO: Same
8 objection.

9 A No. But I wouldn't
10 suspect it to be since I was not in
11 that part of the Bureau of Ships,
12 particularly at the timeframe we were
13 talking about, I mean, that's not the
14 type of documentation that would have
15 come across my desk, typically.

16 Q And you had not done a
17 systematic search of documents to find
18 out whether or not that occurred one
19 way or the other?

20 A Correct, I have certainly
21 not done that.

22 Q Okay. Fair to say you,
23 sitting here, don't know one way or
24 the other whether or not the Navy
25 would have permitted a warning by

1 DAVID P. SARGENT, JR., PE
2 either an equipment manufacturer or
3 someone else about asbestos pursuant
4 to this military standard or not?

5 MR. INSCO:
6 Objection, form, misstates
7 testimony, asked and
8 answered.

9 A Correct, I don't know what
10 the wording would have been, I have no
11 idea. I mean, I'm not -- I don't have
12 an opinion on that.

13 Q Fair enough. Not having
14 an opinion you can put the document in
15 the folder and move on.

16 Let me just ask this, to
17 make sure I'm not -- what you just
18 said, in terms of not having an
19 opinion, would hold true for any
20 revision of Military Standard 129
21 because over the years it did, in
22 fact, change?

23 A Well, let me make sure I
24 understand --

25 Q Right.

1 DAVID P. SARGENT, JR., PE
2 United States government was a
3 defendant in asbestos cases starting
4 in the 1980s?

5 A I'm not surprised. I
6 wouldn't say that I could quote any
7 details.

8 (Exhibit No. 7 was marked.)

9 BY MR. KRISTAL:

10 Q Let me mark as exhibit 7
11 let me hand this to you, this is --
12 has a legal caption, in the United
13 States Claims Court GAF corporation,
14 plaintiff, versus the United States of
15 America, defendant, and this document
16 is defendant, United States of
17 America's partial response to
18 plaintiff, GAF corporation's first
19 requests for admissions and
20 interrogatories; do you see that?

21 A I do.

22 Q Now, you have received,
23 over the years, plaintiff's answers to
24 interrogatories; correct?

25 A Yes, sir.

1 DAVID P. SARGENT, JR., PE

2 Q And you've received them
3 in these cases?

4 A I have.

5 Q So you understand that
6 during a course of the litigation each
7 side is permitted to propound
8 questions to the other side for the
9 other side to answer under oath?

10 A Sure.

11 Q Okay. If you would turn
12 at the bottom to page 123, there's
13 something in the middle of the page,
14 entitled request for admission number
15 103; do you see that?

16 A I do.

17 Q Okay. Let me read the
18 request that was propounded to the
19 United States of America and then the
20 response and then I'm going to ask you
21 if you agree or disagree, okay?

22 A Yes, sir.

23 Q Requests for admission
24 number 103, quote, defendant's
25 specification Mil Standard 129

1 DAVID P. SARGENT, JR., PE
2 prescribed the exclusive manner of
3 marking containers for shipment and
4 storage when products were purchased
5 by the defendant pursuant to
6 contracts, purchase orders, or other
7 specifications which require a
8 conformance with defendant's
9 specification Mil Standard 129, end
10 quote; do you see that?

11 A I do.

12 Q Okay. And the response by
13 the United States is, quote, to the
14 extent this request for admission
15 calls for a legal conclusion the
16 United States objects on the grounds
17 that it is not required to give such a
18 conclusion.

19 Without waiving this
20 objection, Mil Standard 129 speaks for
21 itself and the United States denies
22 this request, end quote; do you see
23 that?

24 A I do.

25 Q So the United States of

1 DAVID P. SARGENT, JR., PE
2 America is denied in this case that
3 Mil Standard 129 was the exclusive
4 manner of marking containers for
5 shipping and storage; do you agree
6 with that?

7 MR. KUENY: Objection
8 to form, speaks for
9 itself.

10 A It's really a legal
11 question that I'm not qualified to
12 answer.

13 Q Well, do you believe that
14 Mil Standard 129 was the exclusive
15 manner of marking containers for
16 shipment and storage in the Navy?

17 A Exclusive? No, sir.

18 Q Okay.

19 A Again, as I said earlier,
20 if it was specifically invoked in a
21 contract as the technical guidance
22 then it would apply to that contract.
23 But it wasn't invoked in all
24 contracts.

25 And it would be my opinion

1 DAVID P. SARGENT, JR., PE
2 that there were certainly situations
3 in other cases that had different
4 standards applied to them.

5 Q Okay. Well, let me then
6 re-ask the question. The request for
7 admission number 103 asks, and let me
8 just ask you, do you agree or disagree
9 that specification Mil Standard 129
10 described the exclusive manner of
11 marking containers for shipment and
12 storage when products were purchased
13 by the United States pursuant to
14 contracts, purchase orders, or other
15 specifications which required
16 conformance with MILspec or Mil
17 Standard 129?

18 A Your question was, do I
19 agree with that?

20 Q Yes.

21 A Yes, you read that
22 correctly.

23 Q I'm not asking you if I
24 read it correctly. I'm asking if you
25 agree with the statement.

1 DAVID P. SARGENT, JR., PE

2 A Yes, sir, but I would add
3 to that that as we have read out of
4 129 if a deviation from 129 is
5 required there's procedures within 129
6 where that can occur.

7 Q Okay. So deviations in
8 the markings that were required by
9 standard -- Mil Standard 129 were
10 allowed if approved?

11 A They were certainly
12 allowed to be considered.

13 Q Right. And the Navy could
14 reject or accept those deviations?

15 A Whoever the procuring
16 activity was.

17 Q Which would include some
18 division or department of the Navy?

19 A Certainly.

20 Q If you turn to page 126,
21 requests for admission number 106,
22 quote, At no time prior to 1964 did
23 the defendant's specification for
24 marking for shipment and storage Mil
25 Standard 129 permit the placement by

1 DAVID P. SARGENT, JR., PE
2 plaintiff of a label or marking
3 concerning the hazards known to
4 defendant regarding exposure to
5 asbestos dust, end quote; do you see
6 that?

7 A I do.

8 Q And the United States, if
9 you look at the response, denied that;
10 correct?

11 A Let me read it.

12 Q Sure.

13 A Sounds reasonable.

14 MR. KUENY:
15 Objection, the answer
16 speaks for itself.

17 A Again, you say denied,
18 denied, yes, sir, I think that's what
19 it says, but it --

20 Q Okay. Now let me ask you
21 --

22 A But not being a lawyer I
23 don't want to misread legal language.

24 Q Well, and it says, and the
25 United States denies; correct?

1 DAVID P. SARGENT, JR., PE

2 MR. INSCO: I'll

3 object, this also calls

4 for a legal conclusion and

5 knowledge of the Rules of

6 Civil Procedure where this

7 case was pending.

8 MR. KRISTAL: Let me

9 --

10 MR. KUENY: And I'll

11 just object, the complete

12 answer speaks for itself.

13 BY MR. KRISTAL:

14 Q Let me read the complete

15 answer, quote, To the extent this

16 requests call for a legal conclusion

17 the United States objects on the

18 grounds that it is not required to

19 give such conclusion.

20 Without waiving this

21 objection Mil Standard 129 speaks for

22 itself and the United States denies;

23 do you see that?

24 A I do.

25 Q Okay. Is your

1 DAVID P. SARGENT, JR., PE
2 understanding of that language that
3 the United States is denying that Mil
4 Standard 129 would not permit a
5 placement by a manufacturer of a label
6 or marking concerning the hazards of
7 asbestos?

8 MR. KUENY:
9 Objection, the answer
10 speaks for itself.

11 A I quite honestly don't
12 know what it's denying. I guess it's
13 -- the request was -- see, when I read
14 the request it doesn't sounds like a
15 request to me, it sounds like a
16 statement.

17 Q Right, it is a statement,
18 and the United States is either
19 admitting or denying it?

20 A Oh, so asking -- excuse
21 me, sir, I -- now I understand.

22 So the request to the
23 United States is to agree with that to
24 admit that that is true.

25 Q Or deny the request?

1 DAVID P. SARGENT, JR., PE

2 A And they deny that prior
3 statement is true.

4 Q That's right.

5 A That's what this document
6 says.

7 Q Do you agree or deny that
8 the statement, request for admission
9 number 106, is true? Do you agree
10 it's true or do you deny it's true?

11 A I have no idea. It's a
12 legal question. I certainly am not an
13 expert in what happened in prior
14 versions of 129. I have no basis
15 whether -- to know whether that
16 statement is true or not. What it
17 says is at a given timeframe, prior to
18 1964 --

19 Q Right.

20 A -- other versions of that
21 military standard didn't permit
22 something.

23 Now, whether that means
24 they didn't have that deviation clause
25 I don't know what it means. I'm not

1 DAVID P. SARGENT, JR., PE
2 qualified to answer. I have not
3 reviewed any of those prior versions.

4 What it says is, is the
5 United States government, whatever the
6 -- I suppose it's the Department of
7 Justice in this case, made the
8 statement that they do not agree with
9 that admission.

10 Q Okay.

11 A But I can't speak for the
12 United States government to see
13 whether that is right or wrong.

14 Q I'm not asking you to
15 speak for the United States
16 government. I'm asking you, as you
17 sit here today, in your opinion, do
18 you agree or disagree with the
19 following: At no time prior to 1964
20 did specification Mil Standard 129
21 permit the placement by a manufacturer
22 of a label or marking concerning the
23 health hazards about asbestos?

24 A Without reviewing this
25 entire 1951 version, which clearly is

1 DAVID P. SARGENT, JR., PE
2 prior to 1964.

3 Q Mm-hmm.

4 A I would say that, from my
5 memory, there is no mention of
6 asbestos warnings in there.

7 And so the statement that
8 it didn't permit placement would say
9 that, as written, that did not,
10 doesn't go into deviations or not, it
11 says, the standard, as written, did
12 not allow. I would agree with that
13 because it didn't require.

14 Q It says, "At no time prior
15 to 1964 did the Mil Standard 129
16 permit an asbestos warning"?

17 A Correct.

18 Q Do you agree that it did
19 or are you saying it didn't?

20 A It did not permit, it did
21 not require and therefore did not
22 permit.

23 Q Well, there's a difference
24 between requiring something and
25 permitting something, we can agree on

1 DAVID P. SARGENT, JR., PE

2 that; correct?

3 A Yes, sir, but if you go
4 back to what I've said several times
5 before, the procurement process, which
6 includes this Mil Standard, is
7 direction on what will be done, it is
8 not a document of what you cannot do,
9 so if it's not in there that it's
10 required to place that warning on
11 there then it is not permitted, at
12 least not without a deviation.

13 Q Right. And it -- and Mil
14 Standard 129 allowed for the
15 consideration of a deviation; correct?

16 A It did.

17 Q Okay.

18 A In 1951 version, at least.

19 Q Okay.

20 A And I'm sure every other
21 version.

22 Q All right. And are you
23 saying that at no time prior to 1964
24 would the Navy have allowed a
25 deviation for a manufacturer to put an

1 DAVID P. SARGENT, JR., PE
2 asbestos health hazard warning?

3 A I have no idea. What I'm
4 saying is that the mil standard that
5 you have presented to me, dated 1951,
6 does not have a requirement to put
7 such a warning on there.

8 Q Okay. And nor --

9 A Therefore, this statement,
10 which you asked me if I agree with, I
11 agree with the government's position
12 that that was not required and,
13 therefore, not permitted in that
14 version.

15 Q The government is saying
16 the exact opposite of what you're
17 saying, do you understand that?

18 A No.

19 Q Okay. There's an
20 affirmative statement at no time prior
21 to 1964 did Mil Standard 129 permit
22 the placement of a label concerning
23 the hazards of asbestos, that's the
24 statement; right?

25 A Yes, sir.

1 DAVID P. SARGENT, JR., PE

2 Q And the United States is
3 denying that, they're denying that at
4 no time prior to 1964 did Mil Standard
5 129 permit an asbestos warning?

6 MR. KUENY:
7 Objection, the document
8 speaks for itself.

9 MR. KRISTAL: It does
10 speak for itself.

11 MR. KUENY: They're
12 not denying the fact.

13 MR. INSCO: I'm also
14 going to object, this has
15 been asked and answered,
16 you've done this twice,
17 now. I mean, the document
18 this deals with the United
19 States' litigation
20 strategies and the
21 position they took as a
22 defendant.

23 MR. KRISTAL: So
24 you're saying the United
25 States is lying in a

1 DAVID P. SARGENT, JR., PE
2 litigation? Okay. Your
3 objections are noted.

4 BY MR. KRISTAL:

5 Q You can answer.

6 A Again, to the extent that
7 this request calls for a legal
8 conclusion the United States objects
9 that it is not -- on the grounds that
10 it is not required to give such a
11 conclusion. I have no idea whether
12 that's true or not, that's a legal
13 position.

14 But then based on that,
15 and without waiving -- waiving its
16 objection, the United States denies.

17 Q That's right.

18 A So it denies the admission
19 that prior to 1964 Mil Standard 129 --

20 Q -- would not have
21 permitted. They're denying that it
22 would not have permitted an asbestos
23 warning?

24 A Boy, there's a triple
25 negative. Denying it would not have

1 DAVID P. SARGENT, JR., PE
2 permitted?

3 I used to work for a
4 company that used to learn to say I'm
5 not so sure that I dare not to do
6 that, and I've never figured out what
7 that means.

8 Q Well, I don't want your
9 answer unless you really understand
10 what it's asking.

11 It says, at no time prior
12 to 1964 did Mil Standard 129 permit an
13 asbestos warning; right?

14 A Yeah, that's what it says.

15 Q Okay. And the United
16 States is denying that; right?

17 A What does it mean that it
18 calls for a legal conclusion and that
19 it's their opinion they don't need to
20 give that? I don't know -- I'm not a
21 legal person.

22 Q Nor do you need to -- I'm
23 asking you --

24 A Well, that's your opinion.
25 I'm not sure I agree with you that I

1 DAVID P. SARGENT, JR., PE

2 don't need to know what that means.

3 Q Let me ask you this: In
4 your opinion, prior to 1964, did Mil
5 Standard 129 permit the placement of
6 an asbestos hazard warning?

7 A No, sir.

8 MR. INSCO: Asked and
9 answered.

10 A I don't believe they did.

11 Q Okay. So if the United
12 States -- well, we don't need to --

13 A It did not permit it, in
14 specific words, saying you can do
15 this, all right? There was a
16 deviation process --

17 Q Right.

18 A -- where it could have
19 been considered.

20 Q Right.

21 A I do not believe 129, at
22 any point in that version 1951, that
23 I've seen, speaks to asbestos up to
24 the timeframe we're talking about.

25 Q I understand that, are you

1 DAVID P. SARGENT, JR., PE
2 aware of any instance at any point in
3 time where a manufacturer of either a
4 piece of equipment or an
5 asbestos-containing product, itself,
6 requested a deviation pursuant to Mil
7 Standard 129?

8 A No, sir.

9 Q To add an asbestos hazard
10 one?

11 A I'm not personally aware
12 of any such situation.

13 Q So, therefore, you're not
14 aware of what the Navy's response
15 would have been in terms of whether
16 that would or wouldn't have been a
17 permitted deviation?

18 A That's accurate.

19 Q Okay.

20 A I have an opinion what it
21 would have been but I don't know for
22 certain.

23 Q And your opinion is based
24 on -- is your opinion based on any
25 Navy document?

1 DAVID P. SARGENT, JR., PE

2 A No, sir, it's based on 35
3 years of experience of working as a
4 naval officer, an acquisition
5 professional, and developing
6 instincts, if you will, and a
7 knowledge base of not only what the
8 Navy does but the rationale for why
9 decisions are made.

10 Q Were you ever asked, in
11 your career in the Navy, to review a
12 requested deviation pursuant to Mil
13 Standard 129?

14 A Not that I recall.

15 Q Was anyone under your
16 direction, to your awareness, asked to
17 do that?

18 A I have no idea. Quite
19 possibly.

20 Q Have you ever engaged in
21 any discussions with anyone at the
22 time you were in the Navy regarding
23 whether or not Mil Standard 129 would
24 have permitted an asbestos warning?

25 A No, sir, I don't recall